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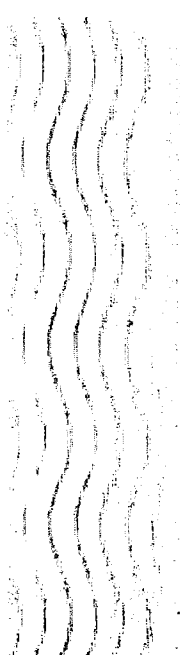
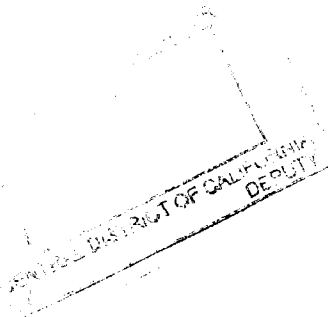
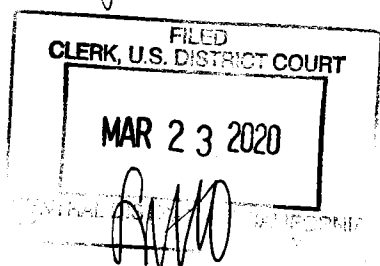


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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

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**Case Name:** USA v. Reed et al  
**Case Number:** 5:03-cr-00084-VAP  
**Filer:**  
**Document Number:** 1818

**Docket Text:**

**ORDER DENYING** Petition to Reduce Sentence (Doc. No. 1811) by Judge Virginia A. Phillips denying [1811] APPLICATION to Reduce Sentence pursuant to First Step Act as to George Williams (24): The Court therefore denies Defendant's Petition requesting a sentence reduction under Section 401 of the First Step Act. (see document for further details) (bm)

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

United States of America,

Plaintiff,

v.

George Williams,

Defendant.

5:03-cr-00084-VAP-24

**Order DENYING Petition to  
Reduce Sentence  
(Doc. No. 1811).**

Before the Court is a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 or For Any Relief Submitted Pro Se (Doc. No. 1811, "Petition") filed by pro se Defendant George Williams. Defendant's Petition requests a sentence reduction pursuant to the First Step Act. The Court previously deemed this matter appropriate for resolution without oral argument, pursuant to Local Rule 7-15. (Doc. No. 1812). After considering all papers filed in support of, and in opposition to, the Petition, the Court denies Defendant's Petition.

**I. BACKGROUND**

On July 28, 2005, Defendant was convicted by a jury of conspiring to manufacture and distribute phencyclidine ("PCP"), in violation of 21 U.S.C. §§ 841, 846. (Doc. Nos. 448; 1001; 1004). On December 5, 2005, during a hearing to establish prior convictions pursuant to 21 U.S.C. § 851, Defendant admitted to having two prior qualifying drug convictions. (Doc.

1 No. 1133). Then, on January 17, 2006, pursuant to then-existing 21 U.S.C.  
2 § 841(b)(1)(A)(viii), Defendant was sentenced to the mandatory minimum—  
3 life in prison. (Doc. No. 1194). After unsuccessfully pursuing a direct  
4 appeal, Defendant's conviction became final on October 28, 2009. (Doc.  
5 No. 1572).

6  
7 Defendant asks the Court to reduce his life sentence to 25 years under  
8 Section 401 of the First Step Act. (Doc. No. 1811). Defendant argues that  
9 retroactive application of Section 401 is compelled by: (1) the Equal  
10 Protection Clause; (2) 1 U.S.C. § 109; (3) the absence of an express  
11 prohibition against retroactivity in Section 401; and (4) the Fifth and Ninth  
12 Amendments to the United States Constitution. (Doc. No. 1811 at 2–3).

13  
14 In response, the Government argues that Defendant is not entitled to  
15 relief under Section 401 since that statute does not apply to convictions and  
16 sentences final before the First Step Act's enactment, which is evident  
17 because there is nothing in the First Step Act, express or otherwise, to  
18 indicate that Congress intended such a result. (Doc. No. 1816 at 3–4).

## 19 20 **II. LEGAL STANDARD**

21 In 2018, Congress passed, and the President signed into law, the First  
22 Step Act, Pub. L. No. 115-391, 132 Stat. 5194. Section 401 of the First Step  
23 Act, titled "Reduce and Restrict Enhanced Sentencing for Prior Drug  
24 Felonies," lessened the penalty for defendants with two or more prior  
25 qualifying drug offenses under 21 U.S.C § 841 by reducing the mandatory  
26 minimum from life imprisonment to 25 years and by narrowing the type of

1 offenses that qualified a defendant for an enhanced sentence. *Id.* at  
2 § 401(a)(2)(A)(ii). A subsection of Section 401, titled “Applicability to  
3 Pending Cases,” expressly provides that “[t]his section, and the  
4 amendments made by this section, shall apply to any offense that was  
5 committed before the date of enactment of this Act, if a sentence for the  
6 offense has not been imposed as of such date of enactment.” *Id.* at  
7 § 401(c).

8  
9 The general federal “savings clause” provides that “[t]he repeal of any  
10 statute shall not ... extinguish any penalty ... incurred under such statute,  
11 unless the repealing Act shall so expressly provide.” 1 U.S.C. § 109. “Case  
12 law makes clear that the word ‘repeal’ applies when a new statute simply  
13 diminishes the penalties that the older statute set forth.” *Dorsey v. United*  
14 *States*, 567 U.S. 260, 272 (2012). Although Section 109 uses the term  
15 “expressly provide,” the United States Supreme Court has held that  
16 Congress need not use “magical passwords” as long as “courts, before  
17 interpreting a new criminal statute to apply its new penalties to a set of pre-  
18 Act offenders, ... assure themselves that ordinary interpretive  
19 considerations point clearly in that direction.” *Id.* at 274–75.

### 20 21 **III. DISCUSSION**

22 Defendant’s request for a sentence reduction under Section 401 of the  
23 First Step Act fails because Section 401 does not apply retroactively to  
24 sentences imposed before the First Step Act’s enactment. The plain  
25 language of the First Step Act makes this clear.

1 To start, the First Step Act does not expressly provide that Section 401  
2 applies to sentences imposed before the First Step Act's enactment. As a  
3 result, no presumption to that effect can be applied absent Congress's clear  
4 intent for Section 401's reduced penalties to apply to sentences imposed  
5 before the First Step Act's enactment. *See Dorsey*, 567 U.S. at 264 (courts  
6 "must assume that Congress did not intend [the new statute's] penalties to  
7 apply unless it clearly indicated to the contrary."). There is no evidence that  
8 Congress had such an intent. Indeed, the plain language of the First Step  
9 Act indicates that it was Congress's intent that Section 401's reduced  
10 penalties would not apply to sentences imposed before the First Step Act's  
11 enactment. By expressly prohibiting Section 401's application to pending  
12 cases where the sentence had been imposed before the First Step Act's  
13 enactment, there is no doubt that Congress also intended to exclude final  
14 cases where the sentence had already been imposed from Section 401's  
15 reach. Accordingly, Congress' intent is evident from the First Step Act's  
16 plain language: Section 401 and its amendments do not apply retroactively  
17 to sentences imposed before the First Step Act's enactment.

18  
19 Several courts have also concluded that defendants sentenced before  
20 the First Step Act's enactment, even those whose cases were pending on  
21 direct appeal at the time of enactment, are not entitled to Section 401's  
22 reduced penalties. *See, e.g., United States v. Wiseman*, 932 F.3d 411, 417  
23 (6th Cir. 2019) (commenting that "the First Step Act is largely forward-  
24 looking and not retroactive," and concluding that defendant was not entitled  
25 to the benefits of Section 401 because "he was sentenced prior to its  
26 effective date and its limited retroactivity does not apply to him."); *United*

1 *States v. Pierson*, 925 F.3d 913, 927–28 (7th Cir. 2019) (noting that Section  
2 401 only applies to sentences imposed after its enactment, and holding that  
3 the imposition of a sentence occurs on the date of sentencing in the district  
4 court (not, as defendant maintained, after an appeal's resolution); *United*  
5 *States v. Garcia*, No. 6:05-CR-00006-1-NKM, 2019 WL 4039638, at \*1  
6 (W.D. Va. Aug. 27, 2019) (finding that defendant sentenced in 2006 was not  
7 entitled to relief under Section 401 because Section 401 did not apply  
8 retroactively); *United States v. Bean*, No. 1:09-CR-143-RJJ, 2019 WL  
9 2537435, at \*5 n.9 (W.D. Mich. June 20, 2019) (“The most natural reading of  
10 Section 401 of the First Step Act, however, is that it is not retroactive.”);  
11 *United States v. Mason*, No. 2:04-CR-00209-RHW-1, 2019 WL 2396568, at  
12 \*6 (E.D. Wash. June 6, 2019) (remarking that the First Step Act “expressly  
13 states that [Section 401] amendments do not apply retroactively—they only  
14 apply to pending cases in which the defendants have not yet been  
15 sentenced.”). The parties have not cited any case law to the contrary, and  
16 there appears to be none.

17  
18 Additionally, the resulting disparity between offenders sentenced before  
19 and after the First Step Act’s enactment does not implicate Defendant’s  
20 constitutional rights. As the United States Supreme Court and Ninth Circuit  
21 recognized with the application of the Fair Sentencing Act of 2010, which  
22 reduced statutory penalties for cocaine base (crack) offenses, the disparate  
23 treatment between pre-Act offenders already sentenced and those not yet  
24 sentenced did not make a “critical difference” because “those disparities,  
25 reflecting a line-drawing effort, will exist whenever Congress enacts a new  
26 law changing sentences (unless Congress intends re-opening sentencing

1 proceedings concluded prior to a new law's effective date)." *Dorsey*, 567  
 2 U.S. at 280–81; *see also United States v. Augustine*, 712 F.3d 1290, 1295  
 3 (9th Cir. 2013) (relying on *Dorsey*, concluding that "[a]ny unfairness of the  
 4 disparity resulting from the inapplicability of the [Fair Sentencing Act] to  
 5 [defendant] ... is beyond the province of this court to resolve."); *United*  
 6 *States v. Baptist*, 646 F.3d 1225, 1228 (9th Cir. 2011) (rejecting defendant's  
 7 challenges under the Fifth, Eighth, and Fourteenth Amendments to his five-  
 8 year mandatory minimum sentence that was imposed under the pre-Fair  
 9 Sentencing Act law). Likewise, the resulting disparity between offenders  
 10 sentenced before the First Step Act, like Defendant, and those sentenced  
 11 after the First Step Act, who will benefit from Section 401's reduced  
 12 penalties, does not violate Defendant's constitutional rights.

13  
 14 In sum, Section 401 and its amendments, including the provision that  
 15 reduced the mandatory minimum for defendants with two or more prior  
 16 qualifying drug convictions under 21 U.S.C. § 841 from life imprisonment to  
 17 25 years, do not apply to sentences imposed before the First Step Act's  
 18 enactment. The First Step Act was enacted on December 21, 2018. Pub. L.  
 19 No. 115-391, 132 Stat. 5194. Defendant's sentence was imposed in 2006,  
 20 well before the First Step Act was enacted. Therefore, because Defendant's  
 21 sentence was imposed before the First Step Act's enactment, he is not  
 22 eligible for the benefits of Section 401.<sup>1</sup>

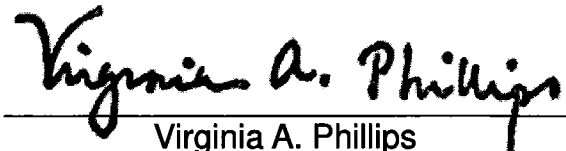
23  
 24 <sup>1</sup> Although Defendant does not argue he is entitled to a sentence reduction  
 25 under Section 404 of the First Step Act, the Government argues that De-  
 26 fendant is not entitled to the benefits of Section 404 because those provi-  
 sions apply only to cocaine base (crack) offenses, not PCP offenses. (See  
 Doc. No. 1816 at 4–5). The Government is correct. In Section 404 of the  
 First Step Act, Congress made the Fair Sentencing Act's statutory changes

1 **IV. CONCLUSION**

2 The Court therefore denies Defendant's Petition requesting a sentence  
3 reduction under Section 401 of the First Step Act.

4  
5  
6 **IT IS SO ORDERED.**

7  
8 Dated: 3/11/20

9  
10   
11 Virginia A. Phillips  
12 Chief United States District Judge  
13  
14  
15  
16

17 for cocaine base (crack) offenses retroactive to defendants who were sen-  
18 tenced before August 3, 2010, which is when the Fair Sentencing Act was  
19 enacted. Pub. L. No. 115-391, 132 Stat. 5194, § 404. Thus, even if De-  
20 fendant's Petition is liberally construed to include a request for relief under  
21 Section 404, Section 404 only applies to cocaine base (crack) offenses im-  
22 pacted by the Fair Sentencing Act, not a PCP offense like the one underly-  
23 ing Defendant's conviction. *See, e.g., United States v. Herrera*, No. CR 02-  
24 531-RSWL-2, 2019 WL 3428835, at \*1 (C.D. Cal. July 29, 2019) (concluding  
25 defendant was not entitled to relief under Section 404 because his convic-  
26 tion involved only methamphetamine and pseudophedrine); *United States*  
*v. Huy Trinh*, No. 10-CR-00385-SI-1, 2019 WL 2061104, at \*1 (N.D. Cal.  
May 9, 2019) (finding defendant was not eligible for a sentence reduction  
under Section 404 because his conviction involved only marijuana); *United*  
*States v. Drayton*, No. CR 10-20018-01-KHV, 2019 WL 464872, at \*2 (D.  
Kan. Feb. 6, 2019) (holding defendant was not eligible for relief under Sec-  
tion 404 because his conviction involved only powder cocaine and mariju-  
ana).